

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

ERLINDO RODRIGUEZ, JR.,

Plaintiff,

v.

L. RAYNA, et al.,

Defendants.

1:19-cv-01788-BAK (HBK) (PC)

**SECOND INFORMATIONAL ORDER—
NOTICE AND WARNING OF
REQUIREMENTS FOR OPPOSING
DEFENDANTS' SUMMARY
JUDGMENT MOTION**

(Doc. No. 51)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Erlindo Rodriguez, Jr. is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This case proceeds against Defendants J. Carranza-Rico and L. Reyna for a December 3, 2018, denial of food claim and against Defendant Reyna for a December 4, 2018 denial of food claim in violation of the Eighth Amendment.

I. *Rand* Notice

Defendants filed a motion for summary judgment on August 8, 2022. (Doc. No. 51.) Defendants' motion is not accompanied by a *Rand* warning. (*Id.*) Consequently, pursuant to *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012), *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), and *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), the Court hereby notifies Plaintiff of the following rights and requirements for opposing the motion:

1 1. Unless otherwise ordered, all motions for summary judgment are briefed pursuant to
2 Local Rule 230(l).

3 2. Plaintiff is required to file an opposition or a statement of non-opposition to
4 Defendants' motion for summary judgment. Local Rule 230(l). If Plaintiff fails to file an
5 opposition or a statement of non-opposition to the motion, this action may be dismissed, with
6 prejudice, for failure to prosecute. The opposition or statement of non-opposition must be filed
7 not more than 21 days after the date of service of the motion. *Id.*

8 3. A motion for summary judgment is a request for judgment on some or all of
9 Plaintiff's claims in favor of Defendants without trial. Fed. R. Civ. P. 56(a). Defendants' motion
10 sets forth the facts which they contend are not reasonably subject to dispute and that entitle them
11 to judgment as a matter of law. Fed. R. Civ. P. 56(c). This is called the Statement of Undisputed
12 Facts. Local Rule 260(a).

13 4. Plaintiff has the right to oppose a motion for summary judgment. To oppose the
14 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth in
15 Defendants' motion but argue that Defendants are not entitled to judgment as a matter of law.

16 5. In the alternative, if Plaintiff does not agree with the facts set forth in Defendants'
17 motion, he may show that Defendants' facts are disputed in one or more of the following ways:
18 (1) Plaintiff may rely upon statements made under the penalty of perjury in the complaint or the
19 opposition if (a) the complaint or opposition shows that Plaintiff has personal knowledge of the
20 matters stated and (b) Plaintiff calls to the Court's attention those parts of the complaint or
21 opposition upon which Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth
22 the facts which Plaintiff believes prove his claims; (3) Plaintiff may rely upon written records but
23 Plaintiff must prove that the records are what he claims they are; or (4) Plaintiff may rely upon
24 all or any part of the transcript of one or more depositions, answers to interrogatories, or
25 admissions obtained in this proceeding. Should Plaintiff fail to contradict Defendants' motion
26 with declarations or other evidence, Defendants' evidence will be taken as truth, and final
27 judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).
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1 6. In opposing Defendants' motion for summary judgment, Local Rule 260(b) requires
2 Plaintiff to reproduce Defendants' itemized facts in the Statement of Undisputed Facts and admit
3 those facts which are undisputed and deny those which are disputed. If Plaintiff disputes (denies)
4 a fact, Plaintiff must cite to the evidence used to support that denial (e.g., pleading, declaration,
5 deposition, interrogatory answer, admission, or other document). Local Rule 260(b).

6 7. If discovery has not yet been opened or if discovery is still open and Plaintiff is not
7 yet able to present facts to justify the opposition to the motion, the Court will consider a request
8 to postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d). Any request to postpone
9 consideration of Defendants' motion for summary judgment must include the following: (1) a
10 declaration setting forth the specific facts Plaintiff hopes to elicit from further discovery, (2) a
11 showing that the facts exist, and (3) a showing that the facts are essential to opposing the motion
12 for summary judgment. *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th Cir. 2009);
13 *Tatum v. City & Cty. of San Francisco*, 441 F.3d 1090, 1100–01 (9th Cir. 2006); *California v.*
14 *Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motion for summary
15 judgment must identify what information is sought and how it would preclude summary
16 judgment. *Blough*, 574 F.3d at 1091 n.5; *Tatum*, 441 F.3d at 1100–01; *Margolis v. Ryan*, 140
17 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

18 8. Unsigned declarations will be stricken, and declarations not signed under penalty of
19 perjury have no evidentiary value.

20 9. The failure of any party to comply with this order, the Federal Rules of Civil
21 Procedure, or the Local Rules of the Eastern District of California may result in the imposition of
22 sanctions including but not limited to dismissal of the action or entry of default.

23 **II. Deadline to File Opposition**

24 The Court recognizes Plaintiff filed a Declaration on August 26, 2022, apparently intending
25 it serve as an opposition to Defendants' summary judgment. (*See* Doc. 52.) However, the
26 declaration alone will not suffice to serve as an opposition to Defendants' motion.

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1 In light of Plaintiff's *pro se* status and Defendants' failure to properly file a *Rand* notice
2 with their motion for summary judgment, the Court finds it appropriate to extend the deadline for
3 Plaintiff to file his opposition to Defendants' motion for summary judgment.

4 **III. Conclusion and Order**

5 Based on the foregoing, IT IS HEREBY ORDERED as follows:

6 1. **Within twenty-one (21) days** from the date of service of this order, Plaintiff shall file
7 an opposition to Defendants' motion for summary judgment, in compliance with Federal Rule of
8 Civil Procedure 56 and Local Rule 260; and

9 2. Any request for an extension of time of this deadline must be filed on or before it
10 expires and must be supported by good cause.

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12 Dated: September 2, 2022

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14 HELENA M. BARCH-KUCHTA
15 UNITED STATES MAGISTRATE JUDGE
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